



CITY OF NEWTON, MASSACHUSETTS

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David B. Cohen
Mayor

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Zoning and Planning Action Date:	to be determined
Board of Aldermen Action Date:	to be determined
90-Day Expiration Date:	to be determined

TO: Ald. Brian E. Yates, Chairman, and
Members of the Zoning and Planning Committee
Planning and Development Board

FROM: Michael Kruse, Director of Planning and Development
Jennifer Molinsky, Principal Planner/Zoning and Planning Coordinator

SUBJECT: Petition #94-08, PLANNING AND DEVELOPMENT BOARD, ALD. JOHNSON & LINSKY recommending amendments to Section 30-1, Definitions; Section 30-8, Use Regulations for Single Residence Districts; Section 30-8(b), Special Permits in Single Residence Districts; Section 30-9(b), Special Permits in Multi Residence Districts; Section 30-19(b), Number of Parking Stalls; Section 30-20(e), Regulation of Signs in Residence Districts; and Section 30-24, Special Permits, by deleting certain provisions and adding new provisions **to regulate home businesses**.

CC: Board of Aldermen
Mayor David B. Cohen
John Lojek, Commissioner of Inspectional Services
Marie Lawlor, Assistant City Solicitor

RECOMMENDATION: SEE "RECOMMENDATIONS" SECTION WITHIN.

The purpose of this memorandum is to provide the Board of Aldermen, Planning and Development Board, and the public with technical information and planning analysis which may be useful in the decision making process of the Boards. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Zoning and Planning Committee of the Board of Aldermen will consider in its discussion at a subsequent Working Session.

I. SUMMARY – PETITION #94-08

In 2002, questions arose about the existing Zoning Ordinance's regulation of home businesses. In response to complaints from neighbors of some home businesses, Ald. Marcia Johnson questioned whether the ordinance properly protected residential neighborhoods from traffic generated by home businesses, and Ald. Johnson, Ald. Bullwinkle and Ald. Stephen Linsky docketed the home businesses ordinance for review (Docket Item #330-02, which was voted "No Action Necessary" once the hearing was scheduled for Docket Item #94-08).

In September 2004, the Planning and Development Board (the "Board") voted to review the home business ordinances, as members questioned whether the ordinance was, in other ways, overly restrictive, particularly in light of new technologies enabling home businesses that were not available when the home business ordinance was adopted and previously amended. The Board created a Home Business Task Force ("Task Force") chaired by David Banash and including Chris Dame, Phil Herr, Joyce Moss and Roger Wyner. Then Chief Zoning Code Official Juris Alksnitis provided staff support.

The Task Force examined potential improvements to the ordinance that would encourage home businesses and the economic development they provide, while also preserving the residential character of neighborhoods and protecting those neighborhoods from interference from home businesses. The Task Force also identified several key issues, including an outdated list of permitted and prohibited uses; difficulty of enforcement, particularly where traffic is a concern; and a discouragement of home businesses, particularly those made possible by recent technologies that have few to no impacts on surrounding areas and are desirable from the perspective of economic development. The Task Force developed proposed zoning changes to remedy these concerns. The Board subsequently approved a set of proposed amendments to the Zoning Ordinance, which are set out in the current Petition #94-08.

II. CURRENT HOME BUSINESS ZONING

The City's Zoning Ordinance currently regulates home businesses, which it defines as commercial activities that take place within residential units, by:

- Listing permitted home businesses (though it does not limit home businesses to only those listed) and explicitly prohibiting others (*see Sec. 30-1, Definitions, in current ordinance*);
- Allowing home businesses as of right in single- and multi-residence districts if they are consistent with the list of acceptable businesses and meet a set of criteria. Criteria concern the location of the business within the dwelling unit and space devoted to the business, the number of nonresident employees and clients, storage and sale of merchandise, signage, provision of parking, and impact on neighbors (including noise and traffic) (*see Sec. 30-8(c) and Sec. 30-9(a) in current ordinance*);
- Allowing the Board of Aldermen to grant special permits for home businesses in single- and multi-residence districts that exceed the as of right thresholds for nonresident employees or clients or floor area, or that involve the waiver of parking requirements or the use of an accessory structure (though the ordinance prohibits

home businesses in accessory apartments). (See *Sec. 30-8(b)*, *Sec. 30-9(b)*, and *Sec. 20-24* in current ordinance)

The current Zoning Ordinance also regulates signage (*Sec. 30-24*) and parking for home businesses (*Sec. 30-20(e)*).

In addition to compliance with zoning, home businesses must register with the City Clerk *if* they will operate under a different name than that of the individual doing business (i.e., “doing business as” or “DBA”). When completing DBA forms, these businesses must also complete a Home Business/Office Affidavit, which is reviewed by the Inspectional Services Department for zoning consistency. However, ***businesses operating under the names of individuals are not likely to fill out this affidavit and undergo review, as they do not need to register with the City Clerk.***

III. PROPOSED AMENDMENTS

Petition #94-08 proposes a number of changes to the regulation of home businesses in the City’s Zoning Ordinance. ***Please see Attachment “A” for a complete copy of this petition.*** This petition’s main changes include:

- **Reliance on performance standards.** Instead of listing specific home businesses that may be permitted or prohibited, the proposed zoning would rely more heavily on a set of performance standards to judge the *effect* of a home business on its surrounding residential areas. (*Please see Sec. 30-1, definition of home business, in petition.*) Of particular note, the proposal includes a more quantifiable traffic standard to guide special permit decisions (described below).
- **Change of special permit granting authority and removal of site plan approval requirement.** Aiming to facilitate the review process of home businesses requiring special permits, the proposal would move Special Permit Granting Authority from the Board of Aldermen to the Planning and Development Board and would remove the requirement for a site plan approval. (*Sec. 30-8(c)(7) of petition.*)
- **Tiered approach.** In an effort to streamline review, petition #94-08 proposes a tiered approach for home businesses (*Sec. 30-8(c) of petition*):
 1. **As of right.** Home businesses with no non-resident employees or customers¹ would be allowed as of right unless meeting the criteria for a special permit.
 2. **Registration with CIS.** Home businesses with minimal impacts would be required to register with the Commissioner of Inspectional Services (“Commissioner”). These would have a limited number of non-resident employees or clients (a total of 4 or fewer clients and/or employees at a given time, and 2 or fewer employees at a given time) and do not meet the criteria for special permit.
 3. **Special permit and registration with Commissioner.** Home businesses meeting or exceeding the following criteria would be required to register with Commissioner ***and*** to obtain a special permit:
 - Presence of more than 4 nonresident employees and/or customers on site at a time;

¹ “Employee” is used in this memo to refer to associates, owners, employees, or contractors, while “customer” is used here to refer to customers, pupils, clients, and patients. The expanded lists of terms are used in petition #94-08.

- Presence of more than 2 nonresident employees on site at the same time;
 - Use of more than 30% habitable space for business;
 - Use of accessory buildings or outdoor space for business (excluding parking); and
 - Care or keeping of more than three animals.
- **Traffic and parking standards.** Traffic and parking are the main enforcement concerns associated with the current home business ordinance. This petition proposes that, in making special permit decisions, the Planning and Development Board shall take into account the determination as to whether the home business is likely to exceed either the guideline of not more than twelve daily trips beginning or ending at the home business (more than four times per year), or the guideline that the business shall not demand more than two parking spots on- or off-street (again, more than four times per year). The Director of Planning and Development would make the determination of whether the business is likely to exceed these guidelines. (*Sec. 30-8(c)(7) of petition*). Additionally, the petition would require one parking space (on- or off-site) for a home business having nonresident employees or clients unless the Planning and Development Board requires additional spaces in acting on a request for special permit. (*Sec. 30-19(d) of petition*).

Petition #94-08 proposes a number of other changes to remove conflicts from and clarify existing zoning provisions, and to update the ordinance to reflect new technologies driving today's home businesses.

- **Number of employees and customers.** This petition would allow a **maximum total of four nonresident employees and customers** at a given time without a special permit. This number includes a **maximum number of two nonresident employees**. Current zoning provisions allow one nonresident employee (two for physicians or dentists) and three customers. While this petition increases the possible number of allowed customers at a time from three to four, the *overall* number of allowed nonresidents (the combination of nonresident employees and customers) remains the same at four (and is in fact reduced for physicians and dentists). (*Sec. 30-8(7)(i) and (ii) of petition.*)
- **Resolution of conflicts or ambiguities in existing zoning.** The proposal aims to resolve ambiguities and conflicts in existing zoning of concern to home businesses, including the following:
 - **Location of business outside of primary dwelling:** Current language prohibits home businesses outside of a dwelling unit but then states that a special permit may be obtained for a business in a detached accessory building, other structure, or land. The proposal clarifies that home businesses occupying space in an accessory unit or outside require a special permit. (*Sec. 30-8(c)(2) a (7) of petition*).
 - **Storage and sale of merchandise.** This petition removes an apparent conflict in current zoning provisions regarding the storage and sale of merchandise and now allows items to be sold from the home business if those items are not stored or physically available at the home (e.g. off-site Internet sales), and allows items to be stored and sold from the home if they are produced entirely on site. (*Sec. 30-8(c)(3) of petition*).

- **Signage.** This petition removes a conflict in the current ordinance, where a sign of up to one square foot is allowed in the home business regulations and a sign of up to two square feet is allowed in the sign regulations. This petition proposes that one sign up to one square feet be permitted. (*See Sec. 30-8(c)(4) and Sec. 30-20 of petition.*)
- **Location of business within a dwelling unit:** Current zoning provisions limit home businesses to no more than 30% of the ground floor of a dwelling unit without a special permit. This petition proposes this be changed to 30% of *habitable* space (and 30% of gross floor area in multifamily dwellings). (*See Sec. 30-8(c)(7)(iii) of petition.*)
- **Businesses in accessory apartments.** Current zoning provisions prohibit home businesses in accessory apartments. This petition removes this prohibition but states that businesses in accessory apartments may not have any nonresidents present. (If the apartment were located in a separate accessory building, it would also require a special permit.) (*Sec. 30-8(c)(7) of petition.*)
- **Addition of other possible impacts.** To the list of negative impacts including noise, vibration, glare, fumes, odors, and electrical interference that a home business is not allowed to impose on a residential neighborhood, this petition would add smoke, dust and other particulate matter, heat, and humidity. Note that “traffic congestion” currently appears with these other impacts, but the petition would separate traffic, moving it to the special permit criteria section 30-8(c)(7). (*See Sec. 30-8(c)(5) of petition.*) Note also that the care and keeping of more than three animals would now require a special permit (*Sec. 30-8(7)(v) of petition.*)

Please see Attachment “B” for a copy a memorandum from the Planning and Development Board, Home Business Committee to the Zoning and Planning Committee of the Board of Aldermen that includes a section by section comparison of the current home business provisions with the proposed provisions.

IV. ANALYSIS AND RECOMMENDATIONS

The Department’s analysis focuses on several issues: economic development; enforcement; change of special permit granting authority and removal of site plan approval requirement; and consistency and clarity.

1. Economic Development

The Department believes the proposal may encourage home businesses by:

- **Allowing more than one business in a home.** The current ordinance allows only one home business per residence, even though computer technology makes it possible to operate multiple businesses from the same computer with little or no effect on immediate residential neighborhoods. This proposal would permit multiple businesses but provides that *all home businesses combined* must meet special permit conditions set out in the petition. The Board of Aldermen should consider whether or not to regulate multiple businesses in a residence where individually each small business does not qualify for a special permit (*as each home business MAY generate a few customers that together do exceed as-of-right limits*)

- **Streamlining the special permitting process.** This proposal aims to streamline the special permitting process by moving it to the Planning and Development Board and eliminating site review requirements, which may have the effect of encouraging more home businesses. At the same time, however, this proposal retains the same special permit criteria as the current ordinance, so it is unlikely that there would be significant change to the type of businesses approved.

2. **Traffic and Parking Analysis and Enforcement**

Because the petition moves traffic considerations to the listed criteria in 30-8(c)(7), we examine traffic and parking separately for home businesses allowed as-of-right from those that would need a special permit.

- **Special permit trip generation and parking “guideline” concept.** Traffic and parking do not themselves trigger the need for a special permit. Rather this petition proposes that the Planning and Development Board, in considering special permit applications triggered by other criteria, use a quantified traffic and parking guideline (specifically, that the business should not exceed twelve daily trips to and from the premises or two parking spaces, more than four times per year). On the one hand, the “guideline” concept is flexible enough that the Board might choose to allow businesses exceeding the guideline if the Director of Planning finds the location or type of business present extenuating circumstances. At the same time, the guidance is quantified, an improvement from current zoning that speaks of “traffic congestion beyond that which normally occurs in the immediate residential area” or that disrupts “peace, tranquility, or safety.”
- **Guideline numbers.** This petition sets out trip generation and parking requirements in certain criteria below. Analysis of these numbers is presented for those businesses that would seek a special permit, and those that need not seek a special permit:
 - **Home businesses requiring special permit.** The numbers proposed by the petition for special permit, namely 12 vehicle trips to and from the home business and 2 parking spaces, appear reasonable from the perspective of both economic development and residential neighborhood traffic and parking concerns. Depending on the type of business, a single client visit might generate two or four trips (a client driving to a psychologist’s home business would generate two trips, there and back, while a parent dropping off and picking up a child at a home tutoring business would generate four trips, with the drop-off equal to two and the pick-up equal to another two). Overall, this would significantly limit the number of car trips per day. The parking requirement would further limit the number of clients arriving/departing by car at a particular time.
 - **Home businesses not requiring a special permit.** Those home businesses that would not meet criteria for special permit, but that would serve nonresident customers are not explicitly regulated for traffic. It is possible that such businesses might have up to four nonresidents on site at a given time (and therefore not trigger a special permit) that generate more than twelve vehicle trips daily, the guideline suggested for use in special permit determinations.

- **Traffic and parking determination.** If the Director of Planning and Development is to determine likely trip generation and parking needs, the Planning Department will need both an administrative procedure and method for approximating trips and parking needs. Regarding the latter, the Director might rely on self-reports from the home business applicant for special permit and assess whether these are reasonable, after conferring with the City Traffic Engineer.
- **Enforcement of traffic and parking.** The proposal provides a quantitative measure against which home business performance can be judged that is preferable to current qualitative language regarding traffic. However, the most likely mechanism for monitoring home business performance for traffic (as well as other areas, such as noise) will remain as it is currently: neighbor complaints.

3. **Move of Special Permit Granting Authority**

The Planning Department is in agreement with this petition and believes that the Planning and Development Board would be an appropriate alternate special permit granting authority in the case of home businesses, and would be able to bring prompt but careful scrutiny to such “minor” petitions. The department recognizes this fundamental change from the current practice, but supports the concept of an alternate special permit granting authority for minor petitions.

4. **Site Plan Approval**

The Planning Department is in agreement with this petition that site plan approval should not be required for most home businesses applying for a special permit, with the exception of businesses applying to occupy outdoor space.

5. **Other Issues**

The Planning Department believes that the proposed petition improves upon the current home business provisions by providing clarity, resolving ambiguous and conflicting issues (e.g. regarding the storage of merchandise and size of signs), and updating the ordinance to reflect an understanding of the impact of new technologies on home businesses.

RECOMMENDATION: The Department of Planning and Development recommends the deletion of certain existing home business provisions contained in the City’s Zoning Ordinance and the addition of certain new provisions to regulate home businesses with one alteration:

Add to the proposed Sec. 30-8(c)(5):

No home business shall result in noise, vibration, glare, fumes, odors, smoke, dust or other particulate matter, heat, humidity or electrical interference in excess of that otherwise common in the neighborhood at the times produced, nor shall any home business disrupt the peace, tranquility or safety of the neighborhood provided, however, that nothing herein shall be deemed to reduce in scope or effect any other ordinance relating to the above. No home business without a special permit shall result in more than twelve daily vehicle trips beginning or ending at the premises more than four times per year or demand more than two on- or off-site parking spaces more than four times per year.

PROPOSED HOME BUSINESS ORDINANCE

1. Amend Zoning **Section 30-1 Definitions** by deleting the definition of Home Business and inserting it its place the following language:

Home business: Any occupation, profession or activity that is conducted for gain as a use accessory to a dwelling unit on the same premises.

2. Amend Zoning **Section 30-8. Use Regulations for Single Residence Districts** by deleting subsection (c) and inserting in its place the following subsection:

(c) *Home Businesses.* In single residence districts one or more home businesses shall be permitted as a use accessory to a dwelling unit subject to the following provisions, except as otherwise provided for specific home businesses elsewhere in this ordinance.

- (1) Registration of home businesses with the Commissioner of Inspectional Services (CIS) shall be required on a form prescribed by him where such businesses:
 - (i) will have non-residents, such as associates, employees, clients, patients, students or customers, on the premises more than one day per week; or
 - (ii) will require a special permit pursuant to item (7) below.
- (2) The home businesses shall be conducted partially or wholly by residents of the dwelling unit.
- (3) No merchandise shall be stored or be physically available at any home business for sale, lease, or other transfer or for shipment except for items produced entirely at or by the home business or for use incidental to it.
- (4) There shall be no exterior display or storage of inventory or equipment and no exterior indication of any home business except for signs as provided at Section 30-20 entitled "Signs and Other Advertising Devices."
- (5) No home business shall result in noise, vibration, glare, fumes, odors, smoke, dust or other particulate matter, heat, humidity or electrical interference in excess of that otherwise common in the neighborhood at the times produced, nor shall any home business disrupt the peace, tranquility or safety of the neighborhood provided, however, that nothing herein shall be deemed to reduce in scope or effect any other ordinance relating to the above.
- (6) No home business located in an accessory apartment authorized under the provisions of section 30-8(d)(2) or 30-8(d)(4) shall employ or cause to otherwise be present any non-residents associated therewith.
- (7) A home business, or all home businesses combined that are conducted in a dwelling unit, if involving any of the following, may be allowed only by special permit granted by the Planning and Development Board pursuant to section 30-24(d). For proposed businesses exceeding the thresholds of either subparagraph (i) or (ii) below the Board,

in making its decision, shall take into consideration the determination of the Director of Planning and Development as to whether the business is likely to exceed either the guideline of not more than twelve daily vehicle trips beginning or ending at the premises more than four times per year or the guideline of business-related parking demand not exceeding two slots, whether on or off-street, more than four times per year and if so, whether there are extenuating circumstances of the location or business that enable a determination of compliance with section 30-24(d)(3) and (4).

- (i) Presence of more than four nonresidents such as associates, owners, employees, contractors, clients, students, patients, customers or others associated with the business on the premises at any time;
- (ii) More than two nonresident associates, owners, or employees or contractors working on the premises at any time;
- (iii) Utilization of more than thirty percent (30%) of the habitable space of the dwelling unit or, in the case of a two-family or multi-family dwelling, more than thirty percent (30%) of the gross floor area of an individual dwelling unit;
- (iv) Occupation of space in an accessory building or, except for parking, outdoor space;
- (v) The care or keeping of more than three animals belonging to non-residents.

3. Amend Zoning **Section 30-8(b), *Special Permits in Single Residence Districts*** by:

A. Adding, in the second clause of the first sentence after the words “board of aldermen” the following language:

“, or in the case of a home business the Planning and Development Board,”

B. Deleting paragraph (12) and inserting in its place the following language:

“(12) Home businesses subject to the provisions of section 30-8(c)(7);”

4. Amend Zoning **Section 30-9(b), *Special Permits in all Multi-Residence Districts*** by

A. Adding, in the second clause of the first sentence after the words “board of aldermen” the following language:

“, or in the case of a home business the Planning and Development Board,”

B.. Deleting paragraph (6) and inserting in its place the following language:

“(6) Home businesses subject to the provisions of section 30-8(c)(7).

5. Amend Zoning **Section 30-19(d) *Number of Parking Stalls*** by adding subparagraph (21) at the end thereof to read as follows:

“(21) One stall for a dwelling unit in which one or more home businesses have one or more adult non-residents, such as associates, owners, employees, contractors, clients, patients, students or customers on the premises more than one day per week unless a larger number is required by the Planning Board in acting on a special permit under Section 30-8(c)(7). An existing driveway may be considered to provide that slot notwithstanding any requirement of Section 30-19(h)(5) a) requiring that access must not involve the moving of another vehicle.”

6. Amend Zoning **Section 30-20(e) *Regulation of signs in residence districts*** as follows:

A. Delete subparagraph d) of Section 30-20(c)(2) and insert in its place the following language:

“d) Signs displaying the name and address of the occupants of a dwelling or its permitted accessory use or occupation, which shall not exceed one square foot and which for a permitted accessory use or occupation shall not be illuminated;”

B. Delete subsection (1) of Section 30-20(e) and insert in its place the following language:

“(1) For each dwelling unit within a one- or two-family dwelling there may be one sign displaying the name and address of the dwelling’s occupants together with any permitted accessory use or occupation, not to exceed one square foot.”

7. Amend Zoning **Section 30-24, *Special Permits*** as follows by inserting a new paragraph (e) as follows and renumbering the paragraphs (e), (f), and (g) to (f), (g), and (h) respectively:

“(e) In the case of a special permit for a home business pursuant to Section 30-8(c)(7) or Section 30-9(b)(6), the Planning and Development Board is designated as the special permit granting authority, and shall act in accordance with procedures and requirements of this Section 30-24 in place of the board of aldermen, provided, however, that the submission specifications for such applications for special permit shall be in accordance with rules adopted by the Planning and Development Board, and provided further that such applications shall not require site plan approval under section 30-23.

MEMORANDUM

From: Planning and Development Board, Home Business Committee
To: Zoning and Planning Committee
Re: Proposal to amend Newton Home Business Ordinances: section by
section comparison
Dated: September 18, 2008

I. DEFINITION OF HOME BUSINESS

Sec. 30-1

Current

Home business: Any commercial activity conducted within a dwelling unit by the residents thereof as an accessory use to the residential use of the dwelling unit, provided that no sale of merchandise, whether retail or wholesale, takes place on the premises, except as expressly permitted by the provisions of section 30-8(c)(5).

The term "home business" shall include, but is not limited to, the studio of an artist, musician, photographer or writer; small group or individual instruction or tutoring; tailoring; millinery; crafts; word processing; computer software development; telephone solicitation; a manicurist; an office of a sales or manufacturer representative; and an office of a physician, dentist, lawyer, architect, registered engineer, accountant, psychologist, social worker or other professional.

The term "home business" shall not include the following: a clothing rental business; a barber shop; a hairdresser; a restaurant; a repair shop, whether for small appliances or otherwise; a real estate broker; an orchestra or instrumental music group; an antique shop; an animal hospital; or businesses similar to those enumerated.

Proposed

Home business: Any occupation, profession or activity that is conducted for gain as a use accessory to a dwelling unit on the same premises.

Comments

One policy of the new ordinance is to include or exclude home businesses not by category but by effect: no matter how well-conceived the list of permitted and prohibited categories of use, it would eventually become over and under inclusive. The example driving this policy was the explosion of computer based technology, vastly expanding the types of businesses that could be run from home, theoretically without effect on the neighborhood. It was felt that the drafting style that fit this policy was to state a definition broadly, as here, and leave the restrictions for the regulations set out in Section 30-8(c).

II. NUMBER OF HOME BUSINESSES

Sec. 30-8. section (c)

Current

Home Businesses. In single residence districts, a single home business per dwelling unit shall be permitted as an accessory use so long as such home business does not violate any of the following conditions:

Proposed

Home Businesses. In single residence districts one or more home businesses shall be permitted as a use accessory to a dwelling unit subject to the following regulations except as otherwise provided for specific home businesses elsewhere in this ordinance:

Comments

The current version does not account for the computer technology that now allows more than a single business to operate from a residence with no effect on the residential neighborhood by that fact alone. A major policy consideration that drove the proposal was the city should encourage economic development in residences provided that the effect on the neighborhood is not detrimental. Thus, it was felt that the quantity of businesses should not be the focus.

III. CONDUCT AND LOCATION OF THE HOME BUSINESS

Sec. 30-8, section (c)(1) and (c)(11)(d); proposed (c) (2) and (c)(7)(ii)

Current

(1) The home business shall be clearly incidental and secondary to the use of the dwelling as a residence, shall be located within the dwelling unit, and shall not change the residential character thereof;

(11) The board of aldermen may grant a special permit in accordance with the procedure provided in section 30-24 for a home business involving any or all of the following:

...(d) The use of a detached accessory building, exterior structure(s), or land outside the residence for the primary purpose of, or accessory to the home business;...

Proposed

(2) The home businesses shall be conducted partially or wholly by residents of the dwelling unit.

(7) A home business, or all home businesses combined that are¹ conducted in a dwelling unit, if involving any of the following, may be allowed only by special permit... pursuant to section 30-24(d)...

- (iv) Occupation of space in an accessory building or, except for parking, outdoor space;

Comments

Another policy we attempted to implement was clarity. The current ordinance is ambiguous, seemingly prohibiting a home business outside the dwelling in §1 but allowing it conditionally (by special permit) in §11. Hence, the phrase “located within the dwelling unit” in (c)(1) was deleted. The phrase “residential character” was deleted also because of its ambiguity and consistent the policy to attempt to regulate by effects that can be measured (“performance” standards) to the extent possible, as set out in other sections. The phrase “clearly incidental and secondary” was considered redundant to the word “accessory.”

IV. SPACE OCCUPIED BY THE HOME BUSINESS

Sec. 30-8, section (c)(2) and (c)(11)(b); proposed (c)(7)(iii)

Current

(2) Irrespective of the location of the home business within the dwelling unit, the total area of the dwelling unit utilized for the home business shall not exceed thirty percent (30%) of the ground floor area of the dwelling unit or thirty percent (30%) of the gross floor area of an individual apartment if the dwelling unit is located in a multifamily dwelling;

(11) The board of aldermen may grant a special permit in accordance with the procedure provided in section 30-24 for a home business involving any or all of the following:

...(b) The utilization for the purpose of the home business of more than thirty percent (30%) of the ground floor area of the dwelling unit;

Proposed

(7) A home business, or all home businesses combined that are conducted in a dwelling unit, if involving any of the following, may be allowed only by special permit... pursuant to section 30-24(d)...

¹ The words “combined that are” were added by committee members after the last official vote of the Planning and Development Board in order to clarify intent and close any potential loophole on this key issue.

- (iii) Utilization of more than thirty percent (30%) of the habitable space of the dwelling unit by the home occupation or, in the case of a multifamily dwelling, more than thirty percent (30%) of the gross floor area of an individual apartment...

Comments

The current ordinance limits the home businesses to no more than 30% of the ground floor of a dwelling unit, but is ambiguous as to how much of any other part of the dwelling may be so-used, if any. ISD interprets it to preclude use on any floor other than the ground floor. Current technology in computer miniaturization makes enforcement of a prohibition by location in any one area of a dwelling difficult: such location can easily vary with the movements of the resident. Finally, there was no consensus that the effect of the business on the neighborhood was better or worse whether the business was located in one location or another within the residence.

To clarify the ambiguity, the Board imported the already defined term “habitable space” without reference to a particular floor and left unregulated, as at present, other space. The current percentage, 30%, was retained. To make the terminology applicable to multi-family dwellings, the term “gross floor area” was employed.

Again, the regulations were consolidated in the special permit section for clarity.

V. EMPLOYEES

Sec. 30-8, section (c)(3) and (c)(11)(a); proposed section (c)(7)(ii)

Current

(3) Not more than one (1) nonresident shall be employed in a secretarial or like position in a home business, except that a physician or dentist may employ one (1) technician in a capacity supportive of the practice of the resident professional in addition to one (1) secretary;

(11) The board of aldermen may grant a special permit in accordance with the procedure provided in section 30-24 for a home business involving any or all of the following:

(a) A number of nonresident employees greater than that permitted under section 30-8(c)(3);...

Proposed

(7) A home business, or all home businesses combined that are conducted in a dwelling unit, if involving any of the following, may be allowed only by special permit... pursuant to section 30-24(d)...

- (ii) More than two nonresident associates, owners, or employees or contractors working on the premises at any time;

Comments

This is in essence a subset of the regulation on customers that follows. Viewed together with that section it provides that only by special permit may the total number of nonresidents at a dwelling can be more than four, of which employees can be more than two. It also expands the definition of employees to include owners and of customers to include clients. It is consistent with the philosophy that there may be more than one home business at a home. Also, it was felt that the medical profession was not necessarily more desirable to have in a residential district than other businesses and probably was less prevalent as a home business than in the past in any event. That the current ordinance does not regulate the presence of nonresidents who are not employees was felt by the committee to be a loophole.

VI. CUSTOMERS

Sec. 30-8, section (c)(4) and (c)(11)(c); proposed section (c)(7)(i)

Current

(4) Not more than three (3) customers, pupils or patients for business or instruction shall be present at any one time;

(11) The board of aldermen may grant a special permit in accordance with the procedure provided in section 30-24 for a home business involving any or all of the following:

...(c) The presence of more than three (3) customers, pupils, or patients for business or instruction at any one time, subject to the provision of a number of parking spaces sufficient to accommodate the activity associated therewith;

Proposed

(7) A home business, or all home businesses combined that are conducted in a dwelling unit, if involving any of the following, may be allowed only by special permit... pursuant to section 30-24(d)...

- (i) Presence of more than four nonresidents such as associates, owners, employees, contractors, clients, students, patients, customers or others associated with the business on the premises at any time;

Comments

The total number of nonresidents is regulated here, unlike the current ordinance which does not so regulate. In addition this proposal adopts the same drafting principle of clarity through consolidation, expands the list of allowed occupants and changes the allowable number of non-residents on-premises from three to four. It was felt that merely

increasing the number by one would not have a detrimental effect on the neighborhood and that the detrimental effects on the neighborhood were better dealt with in the other regulations.

VII. STORAGE AND SALE OF MERCHANDISE

Sec. 30-8, section (c)(5) and (7); proposed section (c)(3)

Current

(5) There shall be no on-premises storage of merchandise for sale in any instance where the home business is primarily a direct mail-order or telephone-order business, except in instances where the merchandise for sale is produced entirely on the premises;

(7) There shall be no retail or wholesale sale of merchandise on the premises;

Proposed

(3) No merchandise shall be stored or be physically² available at the home business for sale, lease, or other transfer or for shipment except for items produced entirely at or by the home business or for use incidental to it;

Comments

Current §5 allows on-premises storage of merchandise for sale in two instances: (1) where the business is not primarily a direct mail-order or telephone-order business and (2) where the merchandise for sale is produced entirely on the premises. Current §7 prohibits all on-premises sale of merchandise. The two sections are not possible to reconcile: allowing sale of merchandise that is stored at the home in certain instances but then prohibiting sale of any merchandise. The proposed policy is to encourage sales that do not affect the neighborhood, such as off-site internet sales. The change attempts to accomplish that while still allowing the traditional sales of merchandise produced at the premises, presumably small sales. If the presumption is wrong, other provisions regulate the sales, such as those relating to traffic. Also, the term “sale” is expanded to cover other types of transfer that were felt would could affect the neighborhood.

VIII. SIGNS

Sec. 30-8, section (c)(6); proposed section (c)(4) and amendments to 30-20

² The word “physically” was added by committee members after the last official vote of the Planning and Development Board in order to clarify intent that off-premises sale of merchandise was not intended to be regulated.

Current

(6) There shall be no exterior display or exterior storage of merchandise, and no exterior indication of the home business other than one (1) non-illuminated identification sign not to exceed one (1) square foot in area;

Proposed

- (4) There shall be no exterior display or storage of inventory or equipment and no exterior indication of any home business except for signs as provided at Section 30-20 entitled "Signs and Other Advertising Devices."

Also, change **Section 30-20(e) *Regulation of signs in residence districts*** as follows:

- A. Delete subparagraph d) of Section 30-20(c)(2) and insert in its place the following language:

"d) Signs displaying the name and address of the occupants of a dwelling or its permitted accessory use or occupation, which shall not exceed one square foot and which for a permitted accessory use or occupation shall not be illuminated;"

- B. Delete subsection (1) of Section 30-20(e) and insert in its place the following language:

"(1) For each dwelling unit within a one- or two-family dwelling there may be one sign displaying the name and address of the dwelling's occupants together with any permitted accessory use or occupation, not to exceed one square foot."

Comments

The current home business ordinance is in conflict with the current sign ordinance, which allows for home business signs up to two square feet. Thus, there is an ambiguity as to which applies. This is intended to clarify the ambiguity by changing the sign ordinance to conform to the provisions in the current home business ordinance, restricting home business signs to one square foot.

IX. QUALITATIVE STANDARDS

Sec. 30-8, section (c)(8), proposed section (c)(5)

Current

(8) The home business shall not produce noise, vibration, glare, fumes, odors, electrical interference or traffic congestion beyond that which normally occurs in the immediate

residential area, nor shall the home business result in the repeated disruption of the peace, tranquility, or safety of the immediate residential neighborhood;

Proposed

(5) No home business shall result in noise, vibration, glare, fumes, odors, smoke, dust or other particulate matter, heat, humidity or electrical interference in excess of that otherwise common in the neighborhood at the times produced, nor shall any home business disrupt the peace, tranquility or safety of the neighborhood provided, however, that nothing herein shall be deemed to reduce in scope or effect any other ordinance relating to the above.

Comments

The proposed changes attempt to cover other effects of the home business that were deemed unacceptable but not previously addressed or that are currently addressed by new ordinances, but whose affect on home businesses is unclear. This was achieved both by new language and, so as to eliminate ambiguity, by reference to other ordinances that have relevance.

X. PARKING

Sec. 30-8, sections (c)(9), (11)(e); proposed section (c)(7)

Current

(9) In addition to the parking required by section 30-19(d) for residential use of the dwelling unit, off-street parking designed in compliance with the requirements of section 30-19(d) shall be provided as follows: one (1) parking stall for each two hundred (200) square feet, or fraction thereof, of floor area used for the home business. If more than one (1) parking stall is required for the home business, the total number of parking stalls required shall be reduced by one (1) stall;

(11) The board of aldermen may grant a special permit in accordance with the procedure provided in section 30-24 for a home business involving any or all of the following:

(e) The waiver of the off-street parking requirement.

Proposed

delete (11)(e) and add:

(7) For proposed businesses exceeding the thresholds of either subparagraph (i) or (ii) below the Board, in making its decision, shall take into consideration the determination of the Director of Planning and Development as to whether the business is likely to exceed either the guideline of not more than twelve daily vehicle trips beginning or ending at the premises more than four times per year or the guideline of business-related parking demand not exceeding two slots, whether on or off-street, more than four times per year and if so, whether there are extenuating circumstances of the location or business that enable a determination of compliance with section 30-24(d)(3) and (4).

Comments

The current ordinance addresses the need for off-street parking as a function only of floor area used by the business. However, we concluded that some of the other activities sought to be regulated might affect the need for parking, such as the number of non-residents driving there. Accordingly, rather than list activities but miss some, in the style of the current ordinance, we took the drafting approach of the performance standard, introducing the concept of “trip ends” to measure traffic. In addition we introduced the concept of prospective determinations as to those measurements by the Director of Planning and Development. This was to assuage concerns that the neighbors be required to police such activity in order to achieve enforcement.

XI. ACCESSORY APARTMENTS

Sec. 30-8, sections (c)(10) and (11)(d); proposed section(c)(6)

Current

(10) In any single family dwelling which has an accessory apartment authorized under the provisions of section 30-8(b)(11), there shall be no more than one (1) home business which shall be located in the principal dwelling unit;

(11) The board of aldermen may grant a special permit in accordance with the procedure provided in section 30-24 for a home business involving any or all of the following

(d) ... provided, however, that no home business shall be permitted in any detached accessory building which is used as an accessory apartment pursuant to the provisions of section 30-8(d)(2) or 30-8(d)(4);

Proposed

(6) No home business located in an accessory apartment authorized under the provisions of section 30-8(d)(2) or 30-8(d)(4) shall employ or cause to otherwise be present any non-residents associated therewith.

Comments

The current ordinance prohibits home businesses in accessory apartments, whether located in the main dwelling or in any detached accessory building. We could see no policy reason to continue that prohibition given the new technologies and the other protections to the neighborhood, provided there were no non-residents present. At the same time we simplified and clarified the references: 30-8(b)(11) only refers to 30-8(d)(2) so we kept only that later reference and that to Pre-existing units in 30-8(d)(4). Again, we consolidated provisions.

XII. REGISTRATION

New (c)(1)

- (1) Registration of home businesses with the Commissioner of Inspectional Services (CIS) shall be required on a form prescribed by him where such businesses:
- (i) will have non-residents, such as associates, employees, clients, patients, students or customers, on the premises more than one day per week; or
 - (ii) will require a special permit pursuant to item (7) below.

Comments

Currently, the ordinance is silent as to whether home businesses need to be registered with the city. However, residents (as well as others) doing business under a different name here by state law are required to file business certificates with the city clerk (G.L. c. 110, § 5). Independently, ISD requires such residential filers to complete affidavits as to their compliance with the provisions of the home business ordinances.

It was felt that registration is a good idea to aid ISD with enforcement, but not based on the need to comply with the business certificate statute. Those criteria that the committee felt were appropriate for registration were felt to be the ones that would likely have the most impact on residential character, as listed above.

XIII. KENNELS

New: (c)(10)(v)

(10) Home businesses involving any of the following may be allowed only by special permit pursuant to section 30-24:

(v) Care or keeping of more than three animals of non-residents.

Comments

This was proposed by the law department to avoid repetition of a situation that arose in an actual case.

XIV. SPECIAL PERMIT GRANTING AUTHORITY

Sec. 30-8, sections (c) (11)(d); proposed changes to 30-24 and 30-8(c)(7)

Current

(11) The board of aldermen may grant a special permit in accordance with the procedure provided in section 30-24 for a home business...

Proposed

Amend Zoning **Section 30-24, Special Permits** as follows by inserting a new paragraph (e) as follows and renumbering the paragraphs (e), (f), and (g) to (f), (g), and (h) respectively:

“(e) In the case of a special permit for a home business pursuant to Section 30-8(c)(7) or Section 30-9(b)(6), the Planning and Development Board is designated as the special permit granting authority, and shall act in accordance with procedures and requirements of this Section 30-24 in place of the board of aldermen, provided, however, that the submission specifications for such applications for special permit shall be in accordance with rules adopted by the Planning and Development Board, and provided further that such applications shall not require site plan approval under section 30-23.

New 30-8(c)(7):

(7) A home business, or all home businesses combined that are conducted in a dwelling unit, if involving any of the following, may be allowed only by special permit granted by the Planning and Development Board pursuant to section 30-24(d).

Comments

Prior to docketing this item the Planning and Development Board presented the proposal to the Economic Development Board, among others. EDC suggested that the current special permit procedure with regard to Home Businesses caused undue expense and delay and thereby unduly discouraged applications for special permits. Indeed, no one in the City Administration who we have interviewed can remember the last application for a Home Business special permit. EDC further suggested the the P/D Board would be the appropriate Special Permit Granting Authority ("SPGA") on this matter. We agreed to include this change. Indeed, the P/D Board is in effect the SPGA with regard to the Light Ordinance (which is not within the Zoning Ordinance) and the Zoning Task Force has proposed that the ZBA be the SPGA regarding its three foot grade change amendment. In order to make a better fit between the scale of concern and the scale of effort involved in seeking flexibility, we suggested that the P/D Board be the SPGA on this topic. We understand that the potential designation of agencies other than the Board of Aldermen is a sensitive topic and is to be examined more broadly in other initiatives currently being discussed, which might make it appropriate to defer designating an agency other than the Board of Aldermen as SPGA for this subject prior to the broader examination.

XV. MULTI-RESIDENCE DISTRICTS

Section 30-9(b)

Current

(b) *Special Permits in all Multi-Residence Districts.* In all multi-residence districts, the board of aldermen may grant a special permit in accordance with the procedures in section 30-24, the density and dimensional controls set forth in section 30-15 and the parking requirements set forth in section 30-19, to use land, buildings and structures for one or more of the following purposes:

... (6) Home businesses subject to the provisions of section 30-8(c)(11).

Proposed

To change (6) to read;

Home businesses subject to the provisions of 30-8(c)(7).

Comments

This change reflects the new numeration. Note that most of the current ordinance and our proposal (but not all) refers to single family dwellings. However, the provisions in fact should apply to multi-residence districts per the implication in 30-9(b) (6) and the express provisions in 30-9(a)(1).

APPENDIX

Currently Enacted Home Business Definition and Regulations

Chapter 30 Article 1

ARTICLE I. IN GENERAL

Sec. 30-1. Definitions.

Home business: *Any commercial activity conducted within a dwelling unit by the residents thereof as an accessory use to the residential use of the dwelling unit, provided that no sale of merchandise, whether retail or wholesale, takes place on the premises, except as expressly permitted by the provisions of section 30-8(c)(5).*

The term "home business" shall include, but is not limited to, the studio of an artist, musician, photographer or writer; small group or individual instruction or tutoring; tailoring; millinery; crafts; word processing; computer software development; telephone solicitation; a manicurist; an office of a sales or manufacturer representative; and an office of a physician, dentist, lawyer, architect, registered engineer, accountant, psychologist, social worker or other professional.

The term "home business" shall not include the following: a clothing rental business; a barber shop; a hairdresser; a restaurant; a repair shop, whether for small appliances or otherwise; a real estate broker; an orchestra or instrumental music group; an antique shop; an animal hospital; or businesses similar to those enumerated.

DIVISION 2. RESIDENTIAL DISTRICTS

Sec. 30-8. Use Regulations for Single Residence District

(c) *Home Businesses.* In single residence districts, a single home business per dwelling unit shall be permitted as an accessory use so long as such home business does not violate any of the following conditions:

(1) The home business shall be clearly incidental and secondary to the use of the dwelling as a residence, shall be located within the dwelling unit, and shall not change the residential character thereof;

(2) Irrespective of the location of the home business within the dwelling unit, the total area of the dwelling unit utilized for the home business shall not exceed thirty percent (30%) of the ground floor area of the dwelling unit or thirty percent (30%) of the gross floor area of an individual apartment if the dwelling unit is located in a multifamily dwelling;

(3) Not more than one (1) nonresident shall be employed in a secretarial or like position in a home business, except that a physician or dentist may employ one (1) technician in a capacity supportive of the practice of the resident professional in addition to one (1) secretary;

- (4) Not more than three (3) customers, pupils or patients for business or instruction shall be present at any one time;
- (5) There shall be no on-premises storage of merchandise for sale in any instance where the home business is primarily a direct mail-order or telephone-order business, except in instances where the merchandise for sale is produced entirely on the premises;
- (6) There shall be no exterior display or exterior storage of merchandise, and no exterior indication of the home business other than one (1) non-illuminated identification sign not to exceed one (1) square foot in area;
- (7) There shall be no retail or wholesale sale of merchandise on the premises;
- (8) The home business shall not produce noise, vibration, glare, fumes, odors, electrical interference or traffic congestion beyond that which normally occurs in the immediate residential area, nor shall the home business result in the repeated disruption of the peace, tranquility, or safety of the immediate residential neighborhood;
- (9) In addition to the parking required by section 30-19(d) for residential use of the dwelling unit, off-street parking designed in compliance with the requirements of section 30-19(d) shall be provided as follows: one (1) parking stall for each two hundred (200) square feet, or fraction thereof, of floor area used for the home business. If more than one (1) parking stall is required for the home business, the total number of parking stalls required shall be reduced by one (1) stall;
- (10) In any single family dwelling which has an accessory apartment authorized under the provisions of section 30-8(b)(11), there shall be no more than one (1) home business which shall be located in the principal dwelling unit;
- (11) The board of aldermen may grant a special permit in accordance with the procedure provided in section 30-24 for a home business involving any or all of the following:
- a) A number of nonresident employees greater than that permitted under section 30-8(c)(3);
 - b) The utilization for the purpose of the home business of more than thirty percent (30%) of the ground floor area of the dwelling unit;
 - c) The presence of more than three (3) customers, pupils, or patients for business or instruction at any one time, subject to the provision of a number of parking spaces sufficient to accommodate the activity associated therewith;
 - d) The use of a detached accessory building, exterior structure(s), or land outside the residence for the primary purpose of, or accessory to the home business; provided, however, that no home business shall be permitted in any detached accessory building which is used as an accessory apartment pursuant to the provisions of section 30-8(d)(2) or 30-8(d)(4);
 - e) The waiver of the off-street parking requirement.